



SUPERIOR COURT OF CALIFORNIA COUNTY OF KERN

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Terry McNally

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County of Kern
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The proposed amendments to the Superior Court of California, County of Kern, Local Rules of Court for January 1, 2015 are provided for your review at:

http://www.kern.courts.ca.gov/pdf/LocalCrRules/ProposedRules_010115.pdf

1. Rule 3.14 Alternative Dispute Resolution
2. Rule 3.14.1 Alternative Dispute Resolution Policy
3. Rule 3.14.2 Order to Show Cause (OSC) Procedure
4. Rule 3.14.3 Assignment/Election to Arbitration
5. Rule 3.14.4 Responsibility and Authority of the Arbitrator
6. Rule 3.14.5 Compensation of Arbitrators
7. Rule 3.14.6 Tolling of Time Limits
8. Rule 3.14.7 Procedure for Handling Complaints about Arbitrators on the Court's Panel
9. Rule 3.14.7.1 Confidentiality
10. Rule 3.14.7.3 Acknowledgment and preliminary review of complaints
11. Rule 3.14.7.4 Appointing an investigator or complaint committee
12. Rule 3.14.7.5 Investigations
13. Rule 3.14.7.6 Final decision on a complaint that was investigated
14. Rule 3.14.7.7 Interim suspension pending a final decision on a complaint

You may submit your comments by email to: wmadmin@kern.courts.ca.gov or mail your comments to:

Terry McNally, CEO
Superior Court of California
County of Kern
1415 Truxtun Avenue
Bakersfield, CA 93301

All comments must be received by 5:00 p.m. Monday, November 3, 2014.

Very truly yours,



TERRY McNALLY

Local Rules of Court (Distribution for Public Comment)

Per California Rules of Court 10.6.13, the Superior Court of California, County of Kern, is distributing the following proposed amendments to the Local Rules of Court for public comment for the January 2015 cycle. Public comment can be submitted by either mailing your comments to the Court Executive Officer, County of Kern, 1415 Truxtun Ave. Bakersfield, CA 93301 or submitting them via the following email site wadmin@kern.courts.ca.gov. All submissions must be received by no later than the close of business on November 3, 2014.

Rule 3.14 Alternative Dispute Resolution (Effective 7/1/03; Amended 1/1/10 to add 3.16.6, Rev. 7/1/10; rev. 7/1/11; ren. 1/1/13; **rev. 1/1/15**)

Rule 3.14.1 Alternative Dispute Resolution Policy (Effective 7/1/03; Rev. 7/1/10; ren. 1/1/13; **rev. 1/1/15**)

~~It is the policy of the~~ The Kern County Superior Court ~~to encourage~~ civil litigants to resolve controversy by means of Alternative Dispute Resolution (ADR), **such as mediation, early neutral evaluation, and arbitration.** ~~The Kern County Superior Court requires mandatory judicial uses the arbitration pursuant to California Rules of Court, Rule 3.811. To that end,~~ **Thus,** the parties in all civil litigation cases in which the parties agree or the court finds the amount in controversy as to each individual plaintiff is \$50,000 or less, shall participate in **ADR judicial arbitration** prior to the matter proceeding to trial ~~under the procedures set forth in Rule 3.14,~~ **unless the court finds that the parties are not amenable to arbitration because the parties have participated effectively in an alternate ADR process or for some other reason. (See California Rules of Court, Rule 3.811)** (Eff. 7/1/03; Rev. 7/1/10; **rev. 1/1/15**)

Rule 3.14.2 Order to Show Cause (OSC) Procedure (Effective 7/1/03; Rev. 7/1/10; rev 7/1/11; ren. 1/1/13; **rev. 1/1/15**)

At the time of the Case Management Conference (CMC), the court shall refer the matter to ~~mediation under the procedures set for in Rule 3.14 herein or~~ judicial arbitration under the California Rules of Court (See **California Rules of Court, Rule 3.800-3.830**). The court may set the case for an OSC as to why ~~mediation or~~ arbitration has not occurred within ninety (90) days of the assignment date set by the clerk (Eff. 7/1/30; Rev. 7/1/10; rev. 7/1/11; **rev. 1/1/15**)

Deleted 1/1/15 - Rule 3.14.3.1 Assignment to Mediation ~~(Effective 7/1/03; Rev. 7/1/10; ren. 1/1/13)~~

~~At the time of the CMC, the court shall assign to court-ordered mediation each case in which the amount in controversy as to each individual plaintiff is \$50,000 or less, unless one of the following occurs:~~

- (a) All plaintiffs elect arbitration in lieu of mediation in the CMC statement;
- (b) All parties stipulate to private mediation on market resources prior to or at the time of the CMC;
- (c) All parties stipulate to binding arbitration prior to or at the time of the CMC;
- (d) The court determines that the matter is not suited for mediation; or
- (e) A party demonstrates to the satisfaction of the court at the CMC that the matter is better suited for arbitration than mediation. (Eff. 7/1/03; Rev. 7/1/10)

~~Deleted 1/1/15 - Rule 3.14.3.2 Assignment of Mediator (Effective 7/1/03; Rev. 7/1/10; ren. 1/1/13)~~

~~Cases assigned to court ordered mediation will be assigned by the clerk to a mediator from the Kern County Superior Court ADR Panel unless all parties have stipulated to a particular mediator from the Kern County Superior Court ADR Panel prior to the CMC, the selected mediator has agreed to serve as mediator in the matter, the selected mediator has agreed to have the mediation completed within the time set forth in Rule 3.14, and the court is apprised of the selection of the mediator in the CMC statement or at the time of the CMC. (Eff. 7/1/03; Rev. 7/1/10)~~

~~Deleted 1/1/15 - Rule 3.14.3.3 Responsibility and Authority of the Mediator (Effective 7/1/03; Rev. 7/1/10; ren. 1/1/13)~~

~~The mediator shall be responsible for and have the authority to:~~

- (a) Contact all parties upon assignment as mediator;
- (b) Notify all parties of the required completion date and propose available times and dates for mediation;
- (c) Assign a date and place for mediation consistent with the required completion date;
- (d) Conduct court ordered mediation allowing for adjournment and reconvening the mediation at a reasonable time for good cause shown, so long as the mediation is completed within 90 days from the date of assignment; and
- (e) Within ten (10) days of completion of the mediation or the 90th day from the date of assignment file a *Statement of Agreement or Non-agreement* (form ADR-100), advising the court whether the mediation ended in full agreement

~~or non-agreement as to the entire case or as to particular parties in the case.~~
(Eff. 7/1/03; Rev. 7/1/10)

- Rule 3.14.3 Assignment/Election to Arbitration (Effective 7/1/03; Rev. 7/1/10; rev. 7/1/11; ren. 1/1/13; ren. 1/1/15)

Cases assigned to court-ordered arbitration or for which arbitration has been elected by all plaintiffs or by stipulation of the parties, shall be assigned to an arbitrator from the Kern County Superior Court Arbitration Panel in accordance with California Rules of Court, Rule 3.815(b), unless all parties have stipulated to a particular arbitrator from the Kern County Superior Court Arbitration Panel prior to the CMC, the selected arbitrator has agreed to serve as arbitrator in the matter, the selected arbitrator has agreed to have the arbitration completed within the time set forth in Rule 3.14, and the court is apprised of the selection of the arbitrator in the CMC statement or at the time of the CMC. (Effective 7/1/03; Rev. 7/1/10; rev. 7/01/11)

- Rule 3.14.4 Responsibility and Authority of the Arbitrator (Effective 7/1/03; Rev. 7/1/10; ren. 1/1/13; ren. 1/1/15)

The arbitrator shall be responsible for and have the authority to:

- (a) Contact all parties upon assignment as arbitrator;
- (b) Notify all parties of the required completion date and propose available times and dates for arbitration;
- (c) Assign a date and place for arbitration consistent with the required completion date;
- (d) Conduct court-ordered arbitration allowing for adjournment and reconvening the arbitration at a reasonable time for good cause shown, so long as the arbitration is completed within 90 days from the date of assignment; and
- (e) Within ten (10) days of completion of the arbitration or the 90th day from the date of assignment file an Arbitration Award with the court. (Effective 7/1/03; Rev. 7/1/10)

- Rule 3.14.5 Compensation of ~~Mediators or~~ Arbitrators (Effective 7/1/03; Rev. 7/1/10; rev. 7/1/11; ren. 1/1/13; rev. 1/1/15)

Arbitrators shall be compensated as provided in CCP §1141.18 and California Rules of Court. (rev. 1/1/15) ~~Compensation of mediators under Rule 3.14 shall be provided by the court and shall be in the amount consistent with court policy; provided however, that the mediator:~~

~~(a) Be available to provide at least three hours of service, not more than one hour of which can be allocated to preparation for mediation; (rev. 7/1/11)~~

~~(b) Provide all reasonable documentation required by the court; and~~

~~(c) Be willing and able to provide on market resources additional mediation services at the request of the parties beyond the time set forth herein. (Effective 7/1/03; Rev. 7/1/10; rev. 7/1/11)~~

Rule 3.14.6 Tolling of Time Limits (effective 7/1/03; Rev. 7/1/10; rev.7/1/11; ren. 1/1/13; rev 1/1/15)

Submission of a case to ~~either mediation under Rule 3.14 or~~ judicial arbitration under the California Rules of Court does not affect the time period specified in the Trial Court Delay Reduction Act (Government code §68600 et. seq.), except that upon written request of all parties filed with the court, the court may, in its sole discretion, order an exception of up to 90 days to the delay reduction time standards to permit ~~mediation or~~ arbitration of an action. (Effective 1/1/10; Rev. 7/1/10; rev. 7/1/11; rev 1/1/15)

Rule 3.14.7 Procedure for Handling Complaints about ~~ADR Neutrals Listed on the~~ Arbitrators on the Court's Panel (Effective 1/1/10; Rev. 7/1/10; ren. 1/1/13; rev. 1/1/15)

These rules establish the court's procedures for receiving, investigating, and resolving complaint about ~~ADR neutrals~~ arbitrators listed on the court's ~~ADR~~ panels. ~~In that the court provides a list of mediators available to litigants in general civil cases, these rules meet the requirements of Rule 3.868 of the California Rules of Court.~~ Nothing in these rules should be interpreted in a manner inconsistent with the California Rules of Court or as limiting the court's inherent or other authority, in its sole and absolute discretion, to determine who may be included on or removed from its lists of ~~neutrals~~ arbitrators. These rules also do not limit the court's authority to follow other procedures or take other actions to ensure the quality of ~~neutrals~~ arbitrators who serve in any court ADR program in contexts other than when addressing a complaint. The failure to follow a requirement or procedure in these rules will not invalidate any action taken by the court in addressing a complaint. (Eff. 1/1/10; Rev. 7/1/10; rev. 1/1/15)

Rule 3.14.7.1 Confidentiality (Effective 1/1/10; Rev. 7/1/10; ren. 1/1/13; rev. 1/1/15)

(a) Preserving the confidentiality of ADR communications

All complaint proceedings will be conducted in a manner that preserves the confidentiality of communications as required by law, including, but not limited to, the confidentiality of any communications between ~~a mediator~~ an arbitrator and all other participants in the ~~mediation~~ case. (Effective 1/1/10; rev. 7/1/10; rev 1/2/15).

(b) Confidentiality of complaint proceedings (Effective 1/1/10; rev. 7/1/10; rev 1/2/15)

All complaint proceedings will occur in private and will be kept confidential. No information or records concerning the receipt, investigation, or resolution of a complaint will be open to the public or disclosed outside the course of the complaint proceeding except as ~~provided in the Rule 3.871(d) of the~~ ~~California Rules of Court or as~~ otherwise required by law. (Eff. 1/1/10; Rev. 7/1/10; rev 1/1/15)

Rule 3.14.7.2 Submission of complaints to the Complaint Coordinator. (Effective 1/1/10; Rev. 7/1/10; ren. 1/1/13)

All complaints shall be in writing and should be submitted or referred to the ADR Coordinator. (Effective 1/1/10; Rev. 7/1/10)

Rule 3.14.7.3 Acknowledgment and preliminary review of complaints (Effective 1/1/10; Rev. 7/1/10; ren. 1/1/13; rev.1/1/15)

(a) Acknowledgment of complaints (Effective 1/1/10; Rev. 7/1/10)

When the ADR Coordinator receives a complaint, the coordinator will send the complainant a written acknowledgment of receipt. (Eff. 1/1/10; Rev. 7/1/10)

(b) Preliminary review of complaints (Effective 1/1/10; Rev. 7/1/10)

(1) The ADR Coordinator will review each complaint to determine whether it warrants investigation or can be promptly, informally, and amicably resolved or closed. The coordinator may:

(A) Informally contact the complainant to obtain clarification or additional information or to provide information that may address the complainant's concern.

- (B) Communicate informally with the ~~neutral~~ **arbitrator** to obtain the ~~neutral's~~ **arbitrator's** perspectives.
- (2) If it appears to the ADR Coordinator that the ~~neutral~~ **arbitrator** may have violated a provision of the rules of conduct, or other applicable ethics requirements, the ADR Coordinator must inform the ~~neutral~~ **arbitrator** about the complaint and give the ~~neutral~~ **arbitrator** an opportunity to provide an informal response. (rev. 1/1/15)
- (3) The ADR Coordinator may close a complaint without initiating an investigation if;
 - (A) The complaint is withdrawn by the complainant;
 - (B) No violation of the rules of conduct or other ethics requirements appears to have occurred or the complaint is without sufficient merit to warrant an investigation;
 - (C) The conduct alleged would constitute a very minor violation of the rules of conduct or other ethics requirements, the coordinator has discussed the complaint with the ~~neutral~~ **arbitrator**, and the ~~neutral~~ **arbitrator** has provided an acceptable explanation or response; or
 - (D) The complainant, the ~~neutral~~ **arbitrator**, and the ADR Coordinator have agreed on a resolution to the complaint. (Rev. 1/1/15)

(c) Notification of closure (Effective 1/1/10; rev. 7/1/10)

If the ADR Coordinator closes a complaint without initiating an investigation, the coordinator must send the complainant notice of this action. (Effective 1/1/10; rev. 7/1/10)

Rule 3.14.7.4 Appointing an investigator or complaint committee (Effective 1/1/10; Rev. 7/1/10; ren. 1/1/13; rev. 1/1/15)

The presiding judge or, at the direction of the presiding judge, the court's ADR Committee, will appoint an investigator who has experience as a ~~neutral~~ **an arbitrator** and is familiar with the applicable rules of conduct or ethics requirements, or a complaint committee that includes at least one such individual, to investigate and make recommendations concerning any complaint that is not resolved or closed by the ADR Coordinator as a result of the preliminary review. (Effective 1/1/10; rev. 1/1/15)

Rule 3.14.7.5 Investigations (Effective 1/1/10; Rev. 7/1/10; ren. 1/1/13; rev. 1/1/15)

(a) Application

The procedures in this rule apply only if a complaint is not resolved or closed through the preliminary review or if the ADR Coordinator initiates an investigation under (c).

(b) Referral of a complaint for investigation

If a complaint is not closed as a result of the preliminary review, the ADR Coordinator will refer it to the investigator or complaint committee for investigation. The ADR Coordinator will provide the investigator or complaint committee with a summary of the preliminary review that includes:

- (1) A copy of the complaint;
- (2) A copy or summary of any response from the ~~neutral~~ arbitrator;
- (3) A list of any violations of the rules of conduct or other applicable ethics requirements that may have occurred; and
- (4) Copies of any previous complaints about the ~~neutral~~ arbitrator relevant to the current complaint. (rev. 1/1/15)

(c) Initiation by the ADR Coordinator

The ADR Coordinator may initiate an investigation based on information received from any source, including an inquiry, indicating that ~~an neutral~~ arbitrator may have violated a provision of the rules of conduct or other ethics requirements. To initiate the investigation, the ADR Coordinator must refer the information received to an investigator or complaint committee with a list of the violations of the rules of conduct or ethics requirements which may have occurred. (rev. 1/1/15)

(d) ~~Neutral's~~ Arbitrator's notice and opportunity to respond

- (1) The investigator or complaint committee must provide the ~~neutral~~ arbitrator with a copy of the materials provided to the investigator or complaint committee by the ADR Coordinator under (b) or (c).
- (2) The ~~neutral~~ arbitrator will be given an opportunity to respond to the complaint and the list of apparent violations. (rev. 1/1/15)

(e) Preparing report and recommendation

The investigator or complaint committee will conduct the investigation that the investigator or complaint committee considers appropriate. Thereafter, the investigator or complaint committee will prepare a written report that summarizes the investigation and states the investigator's or complaint committee's recommendation concerning the final decision on the complaint. The investigator or complaint committee may recommend ~~one or more actions set forth in Rule 3.870 of the California Rules of Court.~~ ~~that the court take no action or that it take appropriate~~ ~~any action it deems appropriate~~, including but not limited to: counseling, admonishment, or reprimand of the arbitrator; imposition of additional training for the arbitrator; or suspension or removal of the arbitrator from the panel. (rev. 1/1/15)

(f) Informing ~~arbitrator~~ ~~neutral~~ of recommendation

The investigator or complaint committee may inform the ~~neutral~~ ~~arbitrator~~ of its recommendation and inquire whether the ~~neutral~~ ~~arbitrator~~ accepts the recommendation. If the ~~neutral~~ ~~arbitrator~~ accepts the recommendation, the investigator's or complaint committee's report must so indicate. (rev. 1/1/15)

(g) Submitting report and recommendation

The investigator or complaint committee must submit its report and recommendation to the ADR Coordinator. The ADR Coordinator must promptly forward a copy of the report and recommendation to the presiding judge or, at the direction of the presiding judge, to the court ADR Committee. (Effective 1/1/10)

Rule 3.14.7.6 Final decision on a complaint that was investigated (Effective 1/1/10; Rev. 7/1/10; ren. 1/1/13; ~~rev. 1/1/15~~)

(a) Responsibility for final decision

The presiding judge is responsible for making the final decision about the action to be taken on any complaint that was investigated under Rule 3.14.7.5, or for designating the Chair of the ADR Committee or ADR Committee to perform this function. (Effective 1/1/10; Rev. 7/1/10)

(b) Acting on recommendation

- (1) Within 30 days after the investigator's or complaint committee's recommendation is forwarded to the presiding judge or the presiding judge's designee, the presiding judge or designee may submit to the ADR Coordinator a decision: (Effective 1/1/10; Rev. 7/1/10)

(A) Affirmatively adopting the investigator's or complaint committee's recommendation as the final decision on the complaint; or

(B) Directing a different action ~~that is permissible under California—
—Rules of Court Rule 3.870.~~ (rev. 1/1/15)

(2) If the presiding judge or his or her designee does not submit a decision within 30 days after the investigator's or complaint committee's recommendation is forwarded, as provided in (1), the investigator's or complaint committee's recommendation will become the final decision on the complaint. (Effective 1/1/10; Rev. 7/1/10)

(c) Notification of final action

The ADR Coordinator must promptly notify the complainant and the ~~neutral~~ **arbitrator** in writing of the final action taken by the court on the complaint. (Effective 1/1/10; rev. 7/1/10)

(d) Authorized disclosures

After the decision on a complaint, the presiding judge, or his or her designee, may authorize the public disclosure of information or records concerning the complaint proceeding that do not reveal any confidential communications. The disclosures that may be authorized under this subdivision include the name of a ~~neutral~~ **an arbitrator** against whom action has been taken, the action taken, and the general basis on which that action was taken. In determining whether to authorize the disclosure of information or records under this subdivision, the presiding judge or designee should consider the purposes of the confidentiality of complaint proceedings stated in California Rules of Court Rule 3.871. (Effective 1/1/10; rev. 7/1/10)

Rule 3.14.7.7 Interim suspension pending a final decision on a complaint (Effective 1/1/10; Rev. 7/1/10; ren. 1/1/13; **rev. 1/1/15**)

If the preliminary review or the investigation indicates that a ~~neutral~~ **an arbitrator** may pose a threat of harm to ADR participants or to the integrity of the court's ADR programs, the presiding judge or his or her designee may suspend the ~~neutral~~ **arbitrator** from the court's panels or lists pending final decision on the complaint. The ADR Coordinator may make a recommendation to the presiding judge or the designee regarding such a suspension. (Effective 1/1/10; Rev. 7/1/10; **rev. 1/1/15**)